

WETLANDS COUNCIL

MINUTES

April 9, 2019

The Wetlands Council met on Tuesday, April 9, 2019 in Rooms 112, 113, 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Matthew Bosiak, Lee Carbonneau, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Seth Prescott, Russ St. Pierre, Wendy Weisiger and Gretchen Young

Absentee: Councilor Jim Gove

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeal Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 8:00 a.m. with introductions and a quorum present.

1. Approval of Minutes

- ***Councilor Henderson made a motion to approve the March 12, 2019 meeting minutes, second by Councilor Young. Motion passed unanimously with Councilor St. Pierre abstaining.***

2. Public Input: None

The new Water Division Director, Thomas E. O'Donovan, was introduced and shared his background.

4. New Business

a. ARM Fund Reallocation – Lori Sommer

A project has accumulated more than the funds necessary and they've asked that funds be reallocated to the Lamprey River project where funds are needed. This would complete the fundraising for both projects. All other entities are in agreement with this. Discussion was held. Council members are concerned that reallocation may possibly be considered discriminatory as it is available only to awardees with multiple successful projects in one year.

- ***Councilor Lievens made a motion to approve the transfer, second by Councilor Mellor. Motion passed unanimously with Councilor Henderson abstaining.***

b. Wetlands Update – Collis Adams Staffing –

They are working with a full staff with just one vacancy in the enforcement area. Gino Infascelli will be retiring at the end of the month.

Rules – the rules set will be going before JLCAR April 26th. There will be a public hearing. They will be amended in the future as needed.

Legislation –

HB 281 – Beaver Damming – clarifies devices that can be installed without a permit

HB 326 – prime wetlands definition – at this time a minor tweak

HB 542 – establishes a funding source for grants to municipalities

HB 645 – sets up a dock registration program

HB 668 - relative to heating, agitating or other devices in public waters.

HB 662 – increasing fees without rule writing authority. All goes into one fund now.

SB 203 - making modifications to legal requirements for wetlands and environmental council administrative appeals. Will be heard April 10, 2019 at 10:30 in room 305.

There will be extensive training once the rules set passes. There will also be new forms and guidance documents to match the new rules.

3. **Status of Appeals**
Paula Scott, Appeals Clerk

I. New Appeals

II. Decisions that need to be written/finalized and issued.

III. Hearings or PHCs Pending

Docket No. 17-10 WtC – Patricia A. Rose Appeal

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer

Hearing Officer: October 17, 2017 David Conley appointed by AG.

Status: July 14, 2017 received Petition for Appeal. December 7, 2018 issued Pre-hearing Order scheduling hearing for April 9, 2019 at 9 a.m. January 7, 2019 received Motion to Compel. 1/17/19 issued letter granting Motion to Compel. February 22, 2019 received Appearance of Joshua Harrison for the Department. March 8, 2019 received Appellant's Witness and Exhibit List and a Motion to Continue and to Provide Information. 3/8/19 received State's Witness and Exhibit List. 3/12/19 received Permittee's witness and Exhibit List. 3/13/19 received Permittees Objection and Response to Appellant's Motion to Continue and Provide Information. 3/18/19 issued Ruling Granting in part and denying in part, Appellant's Motion to Continue and Provide Information. 3/18/19 received Objection to Permittee's Witness and Exhibit List. April 3, 2019 issued Ruling regarding Objection to Permittee's Witness and Exhibit List. 4/4/19 received Permittee's Objection and Petition for Reconsideration. 4/5/19 issued Ruling denying Permittee's Objection and Petition for Reconsideration.

Docket No. 18-13 WtC – William R. Davis Appeal

Subject: 9/5/18 Approval of Wetlands Permit #2018-01848 issued to Kimberly A. Wesson Revocable Trust

Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: October 5, 2018 received Petition for Appeal. 10/9/18 issued Insufficient Appeal letter. November 8, 2018 received Supplemental to Petition for Appeal. 11/9/18 issued Receipt of Revised Appeal letter. Council to accept or dismiss Appeal at today's meeting. Discussion was held. Motion to Deny was passed on 12/11/18. 12/12/18 issued Ruling denying Acceptance of Appeal. January 11, 2019 received Motion for Reconsideration. Discussion was held. February 12, 2019 Council granted Motion for Reconsideration. 2/14/19 issued ruling granting Motion for Reconsideration. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 9 a.m. March 18, 2019 issued Pre-hearing Order scheduling hearing for June 11, 2019 at 9 a.m.

Docket No. 18-14 WtC – Kathleen McDonald Appeal

Subject: 9/17/18 Approval of Wetlands Permit #2017-00818 issued to Regina Gordon Revocable Trust

Hearing Officer: January 11, 2019 David Conley was appointed by AG.

Recused: Councilor Gove

Status: October 12, 2018 received Petition for Appeal. 10/15/18 issued Insufficient Appeal letter. 11/14/18 received Revised Petition for Appeal. November 19, 2018 issued Receipt of Revised Appeal. December 4, 2018 received Appearance of Patricia Paniccioco for permittee. Motion to Intervene and Motion requesting Summary Dismissed. January 4, 2019 received addition to Appeal. Council was made aware of a date discrepancy. Council accepted appeal and denied Motion for Summary Dismissal on January 8, 2019. 1/11/19 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/11/19 received Objection to Letter Request by McDonald to Supplement the Appeal record. 1/17/19 issued Notice of Pre-hearing Conference scheduled for February 22nd at 9 a.m. 2/22/19 issued Pre-hearing Order scheduling Hearing for May 14, 2019 at 9 a.m.

Docket No. 18-15 WtC – Nancy Hall and Edward Benway, Trustee Appeal

Subject: 9/18/18 Administrative Order No. 18-015 WD

Hearing Officer: December 17, 2018 David Conley was appointed by AG

Status: October 18, 2018 received Petition for Appeal. 10/19/18 issued Receipt of Appeal Letter. Council to accept or dismiss Appeal at today's meeting. Appeal was accepted on December 11, 2018. 12/12/18 issued Appeal Accepted letter. January 4, 2019 issued Notice of Pre-hearing Conference scheduled for January 28,

2019 at 1 p.m. 1/18/19 received Motion to Continue Pre-hearing Conference. 1/23/19 received Appearance from Collis Adams and issued Letter granting Motion to Continue PHC rescheduling it for May 6, 2019 at 10 a.m.

Docket No. 19-02 WtC – Timothy & Jean Pineau and Jean Pineau, Trustee Appeal

Subject: 12/19/18 amendment to Administrative Order No. 18-020 WD

Hearing Officer: February 14, 2019 David Conley was appointed by AG.

Status: January 11, 2019 received Appearance from Regina Nadeau and Petition for Appeal. 1/15/19 issued receipt of Appeal letter. Council to accept or dismiss Appeal in today's meeting (2/12/19). Council voted to accept the Appeal on February 12, 2019. 2/19/19 issued Appeal accepted letter. 2/25/19 issued Notice of Pre-hearing Conference scheduled for March 18, 2019 at 10 a.m. 2/26/19 received Appearance from Atty. Reimers. 3/1/19 received Appearance from Atty. Aslin. 3/11/19 received Petition to Intervene. 3/18/19 issued Pre-hearing Order granting Motion to Intervene and scheduling a second Pre-hearing Conference for May 8, 2019 at 8 a.m.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

V. Misc.

Docket No. 18-03 WtC – New Castle Conservation Commission Appeal

Subject: 1/16/18 approval of Wetlands Permit No. 2017-00487 issued to Marion Clough

Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 15, 2018 received Notice of Appeal. 1/04/19 received Appellant's Motion for Reconsideration of December 7, 2018 Order. 1/8/19 received Appearance of Christopher Aslin for the Department and received the Department's Witness and Exhibit List. 1/9/19 received Permittee's Witness and Exhibit List. 1/11/19 received Objection to Appellant's Motion for Reconsideration. 1/14/19 received Assented-to-Motion for Extension to Close Record for Filing Requests. 1/15/19 received Permittee's Motion to Exclude. 1/17/19 issued Notice of Pretrial Hearing on Applicant's Motion for Summary Judgment and Appellant's Objection and Cross Motion for Summary Judgment to be held on 1/22/19 at 11 a.m. in room 110. 1/17/19 received Appellant's Objection to Applicant's Motion to Exclude. 1/18/19 issued ruling denying Motion to Exclude. 1/23/19 issued rulings on Motions remanding Appeal to the Department for purposes of soliciting additional public comment. February 12, 2019 received Appellant's Motion for Reconsideration. 2/19/19 received Objection to Appellant's Motion for Reconsideration. 2/19/19 received DES' Objection to Appellant's Motion for Reconsideration. 2/22/19 issued letter ruling denying Motion for Reconsideration.

5. Old Business

Some members had attended the Attorney General's training on March 29th. Chairman Kimball asked about considerations for pro se – he was advised to bend as much as possible if no statutory rule is being broken.

Audit response letter was discussed. May 10th will be the audit meeting

- ***Councilor Klass made a motion to unseal the minutes of June 12, 2019 and August 28, 2019 to the extent, if any, that the Joint Legislative Finance Committee, under RSA 14-31-a:II, at its May 10, 2019 meeting or any other time, approves the Wetlands Audit report as a public record, if so advised by our attorney at a later date, second by Councilor Henderson. In an individual vote it passed unanimously.***

Audit response letter changes were noted. Review of each observation was reviewed and discussion was held.

Email comments just to the Chairman by April 12th, a new letter will be distributed for comments and then it will given to the auditors by end of next week.

6. Next Meeting –

The next meeting is May 14, 2019 at 8 a.m. with a hearing after at 9. Councilors Henderson & Carboneau will be not at the May hearing.

7. **Adjournment**

- ***Councilor Henderson made a motion to adjourn, second by Councilor Klass. Motion passed unanimously.***

Meeting adjourned at 9:06 a.m.

WETLANDS COUNCIL

HEARING MINUTES

April 9, 2019

The Wetlands Council met for
Docket No. 17-10 WtC – Patricia A. Rose Appeal Hearing
Tuesday, April 9, 2019 in Rooms 112, 113, & 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Matt Bosiak, Deb Lievens, Richard Mellor, Wendy Weisiger, Lee Carbonneau, Carol Henderson, Seth Prescott, Michael Klass, and Russ St. Pierre

Also present was: Paula Scott, Appeals Clerk

The Hearing was called to order by Hearings Officer David Conley at 9:20 a.m. The Hearing record was closed at 3:00 p.m.

Deliberations were called to order at 3:08 p.m.

Council voted to Deny the Appeal.

Deliberations ended at 3:50 p.m.